IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09/01/2003

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THE HON'BLE MR.JUSTICE M.KARPAGAVINAYAGAM
and
THE HON'BLE MR.JUSTICE A.K. RAJAN

Criminal Appeal No.1072 of 1998

Muraleedharan .. Appellant

-Vs-

STATE, represented by
Inspector of Police,
B-5, Singanallur Police Station,
Coimbatore City. .. Respondent

This appeal has been filed against the judgment dated 13.10.1998 in S.C.No.165 of 1997 by the II Additional Sessions Judge, Coimbatore, as stated therein.

!For Appellant : Mr. V.Gopinath,
Senior counsel for
Mr.K. Selvarangam.

^For Respondent : Mr. E.Raja,
Additional Public Prosecutor,
High Court, Madras.

:J U D G M E N T

(The judgment of the Court was delivered by M.KARPAGAVINAYAGAM,J)
Challenging the conviction under Section 302 I.P.C., the appellant Muralidharan has filed this appeal.
2. The case of the prosecution in brief is as follows:
(a) The deceased Dakshinamurthy was an auto-rickshaw driver. The accused Muralidharan and another accused Maheswaran were friends. P. W.1 Mohan Kumar was also known to the accused Maheswaran. Some days prior to the date of occurrence, the deceased Dakshinamurthy eveteased the sister of Muralidharan, the accused. Over this, there was a quarrel between the accused and the deceased. In order to take revenge upon the deceased, Maheswaran and Muralidharan, the accused hatched a conspiracy to commit murder of the deceased.
(b) In pursuance of this, on the midnight of 8/9.2.1994 at 12 O' clock, the accused Maheswaran and the appellant Muralidharan along with Mohan

Kumar, P.W.1 came to the house of the deceased and requested him to take them in his auto-rickshaw and to drop Mohan Kumar in their house as Mohan Kumar drank excessively. Therefore, the deceased took all the three and went to Singanallur area.

(c) While they were proceeding towards Singanallur, Maheswaran asked the deceased to stop the auto-rickshaw stating that P.W.1 developed vomiting sensation. Accordingly, the auto was stopped. The accused-1 and 2 got down from the auto-rickshaw and took P.W.1 to roadside to enable him to vomit. The deceased also got down from the auto and was standing near the auto-rickshaw. Suddenly, Maheswaran and Muralidharan, the accused-1 and 2 came near the deceased and began to attack him. Maheswaran with aruval gave a cut on the head of the deceased with the weapon and the appellant Muralidharan with a knife stabbed the deceased repeatedly. On noticing this, P.W.1 got panicky and ran away from the scene. The deceased fell down with injuries. The accused-1 and 2 sped away from the scene.

(d) The deceased then got up with bleeding injuries, drove his auto-rickshaw and came near Maniam Theatre. He stopped near the autorickshaw stand and inform P.W.2 Sivakumar who is the another autorickshaw driver, as to what happened and requested him to take him to the Government Hospital. Accordingly, P.W.2 took the victim in his auto-rickshaw to the Government Hospital and admitted him.

(e) P.W.15 doctor examined him and gave treatment and then sent intimation, Ex.P.20 to the Out-post police station. After examining the victim, he gave accident register, Ex.P.25. In spite of treatment, the deceased died at 4.00 a.m.on that day. Therefore, the doctor P.W.15 Dr. Ramachandran who was on duty gave death intimation, Ex.P.21 to the police station.

(f) In the meantime, P.W.2 went and informed the relatives of the deceased about his admission in the hospital and went to the Singanallur Police Station and gave the complaint, Ex.P.1. The same was registered for the offence under Section 307 I.P.C. After the death of the deceased, the Singanallur Police received the death intimation.

(g) On receipt of the message, P.W.17, Inspector of Police took up investigation and went to the spot and prepared Observation Mahazar and Rough Sketch and collected blood-stained earth and sample earth etc. Then, the case which was originally registered under Section 307 I.P.C. was altered into one under Section 302 I.P.C. P.W.17 He conducted inquest on the dead body of the deceased in the hospital. Then, he sent a requisition to the doctor to conduct autopsy on the dead body.

(h) P.W.10 doctor commenced post-mortem on 9.2.1994 at 2.15 p.m. and found 15 injuries all over the body and gave opinion that the deceased would appear to have died of shock and hemorrhage as a result of multiple stab injuries. Ex.P.15 is the post-mortem certificate.

(i) On 12.2.1994, P.W.17 arrested A.1 Maheswaran, A.2 Muralidharan and recorded their confession. In pursuance of the confession, M.O.3 aruval was recovered from A.1 Maheswaran and M.O.2 knife was recovered from A.2 Muralidharan. P.W.18, another Inspector of Police took up further investigation and examined the witnesses on 21.2.1994 at about 3.15 p.m. Mohan Kumar, P.W.1 surrendered before the police and handed over the wrist

watch, M.O.1 said to have been given to him by the A.1, Maheswaran. P.W.1 was arrested as A.3 and then he was sent for judicial remand.
(j) On 26.2.1994, P.W.18, Inspector of Police requested the Chief Judicial Magistrate to arrange for recording the confessional statement of the said Mohan Kumar under Section 164 Cr.P.C. P.W.12, the Judicial Magistrate recorded the statement under Section 164 Cr.P.C. from Mohan Kumar (A.3). Subsequently, on the request made by the Inspector of Police, P.W.14, Chief Judicial Magistrate granted pardon on 27 .2.1994 to the accused No.3 and treated him as an approver Then P. W.19 another Inspector of Police continued the investigation and examined the other witnesses. After completing the investigation, he filed the charge sheet against the accused-1 and 2 for the offence under Section 302 read with 120-B I.P.C.
3. Even before the commencement of trial, A.1 Maheswaran died. Therefore, the appellant Muralidharan alone was tried for the offence under Sections 120-B and 302 I.P.C.
4. During the course of trial, P.Ws.1 to 19 were examined, Exs.P.1 to P.13 were filed and M.Os.1 to 13 were marked.

5. When the accused was questioned under Section 313 Cr.P.C., he simply denied his complicity in the offence. 6. The trial Court on appraisal of the evidence available on record, concluded that the prosecution has established its case against the accused under Section 302 I.P.C. and convicted him thereunder. Hence, this appeal. 7. Mr. V. Gopinath, learned senior counsel would take us through the entire evidence and made the following submission.
"The evidence of Mohan Kumar, P.W.1 Approver is not reliable, especially when he admitted during the course of cross-examination that he gave a statement before the Judicial Magistrate only on the assurance that he would be taken as approver and as such, the said statement cannot be said to be reliable; further, the conduct of P.W.1 in not informing any person for about ten days after the occurrence, would also affect the credibility of his evidence. That apart, P.W.3 would not have seen the deceased going along with other accused, since P.W.1 did not refer to the presence of P.W.3 when the deceased left from his house in his auto-rickshaw. The evidence of P.W.10, post-mortem doctor would clearly show that the deceased having sustained 15 grievous injuries all over the body would not have driven the auto for about 2 kilometres and as such, the evidence of P.W.2 giving the details of the oral dying declaration cannot be believed. "
8. In reply to the above submissions, Mr. Raja, learned Additional Public Prosecutor would contend that the evidence of P.W.2 is so natural, since he was the person who took the victim to the hospital which is corroborated by Exs.P.20 and P.25, the intimation and the accident register and he informed the relatives immediately and then went to the police station and gave Ex.P.1 complaint mentioning about the oral dying declaration given by the deceased and also the evidence of P.W.2 is well corroborated by the evidence of the doctor and as such, the evidence of both P.Ws.1 and 2 is supported by other materials like medical evidence etc., and the recovery of the weapons from A.1 and A.2 and consequently, it has to be held that the reasonings given by the trial Court for imposing the conviction are perfectly justified.
9. We have given our anxious consideration to the rival contentions

urged by both the counsel and gone through the records.

10. At the outset, it shall be stated that the evidence of P.W.2 Shivakumar, auto-driver, who took the deceased to the hospital when he was in serious condition and gave the complaint to the police is so natural and trustworthy.

11. According to P.W.2 when he was sleeping in the auto stand in the mid-night, the deceased came in his auto with full of bleeding injuries all over the body and woke him up. When P.W.2 saw the deceased sitting in the auto, he was shocked to notice that the condition of the deceased was so serious. When P.W.2 asked about the reason for the injuries, the deceased told him that he was attacked by A.1 Maheswaran and A.2 Muralidharan in view of the earlier incident in which he had eve-teased the sister of Muralidharan. Then P.W.2 took him to the Government Hospital where he was admitted. P.W.15, the doctor gave treatment and sent the intimation, Ex.P.20 to the Out-post station. In Ex.P.20, it is clearly mentioned that the victim Dakshinamurthy was admitted in the hospital and he was brought by Shivakumar, P.W.2. Similarly, in Ex.P.25, it is clearly mentioned that the victim was examined by P.W.15. Ex.P.20 reached the police station immediately. At 2.00 a.m., P.W.2 went to the police station and gave the complaint Ex.P.1. In Ex.P.1, he had clearly stated what the deceased told him. On the basis of the complaint given by P.W.2 the case was originally registered against A.1 and A.2 alone.

12. Then, on 12.2.1994, A.1 and A.2 were arrested and M.Os.2 and 3 were recovered from them respectively. Only on interrogation, P.W.17 Inspector of Police came to know about the involvement of Mohan Kumar (P.W.1). When P.W.1 searched for Mohan Kumar on the basis of the confession given by A.1 and A.2, he decided to surrender before the police. Accordingly, he surrendered before the police on 21.2.1994 . Thereafter, P.W.18 another Inspector of Police arranged to record the confession statement from Mohan Kumar, under Section 164 Cr.P.C. and accordingly the same was recorded by the Judicial Magistrate on 2 6.2.1994. P.W.14, the Chief Judicial Magistrate thereafter granted pardon to Mohan Kumar on 27.2.1994. On the basis of the pardon, he was taken as an approver and cited as one of the witnesses. Accordingly, the said Mohan Kumar was examined as P.W.1.

13. A reading of the evidence of P.W.1 would clearly indicate that immediately after the occurrence he ran away from the scene of occurrence and did not turn up to his house. On the other hand, he went and stayed with his grandfather's house. Only on coming to know through the newspapers that he was also being searched for in the said murder case, he surrendered before the police. Thereupon, the confession statement under Section 164 Cr.P.C. was recorded. A reading of Ex.P.18 , the 164 statement and the evidence of P.W.1 would make it clear that the confession given by P.W.1 with reference to the occurrence is quite consistent and reliable. Moreover, his evidence has been clearly corroborated by the medical evidence adduced by Doctors, P.Ws.15, 1 6 and 10.

14. Much was said about the doctor's evidence. P.W.10 the doctor stated that the deceased could not have driven the vehicle for about two kilometres. We have also noticed the nature of injuries. But, the fact remains that P.W.15, the Doctor who examined the deceased, found that the

deceased was conscious and he was able to answer the questions. He further stated in his deposition that the details of the incident, time, date and all other particulars were given by the deceased himself. So, the evidence of P.W.15 would clearly indicate that the deceased was conscious enough to give the particulars of the incident and also answered the question put by the doctor.

15. In the above circumstances, we cannot give much importance to the opinion evidence given by P.W.10 that after sustaining these injuries, he could not have driven the auto. Furthermore, the evidence of P.Ws.1 and 2 has been amply corroborated by the arrest and recovery and also by the medical evidence adduced by P.W.15 and P.W.10.

16. It is also noticed from the deposition given by P.W.2 who refers to the oral dying declaration made by the deceased has not been challenged in the cross-examination. Though P.W.3 would state that a statement had been obtained by the Head Constable from the deceased Dakshinamurthy in the hospital, P.W.17, the Inspector of Police emphatically denied having obtained any such statement from the deceased.

17. Under these circumstances, having regard to the reliability of the evidence adduced by P.W.2 and also the evidence of P.W.1 which finds corroboration through the other materials, we are of the considered view that there are sufficient materials to find the accused guilty for the offence of murder. Therefore, the conviction and sentence imposed by the trial Court on the accused is perfectly valid and the same is liable to be confirmed and accordingly confirmed. Thus, the appeal is dismissed.

Index: Yes
Web Site: Yes

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